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ON 2-21-07 *MA*

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF DENTISTRY

IN THE MATTER OF

Administrative Action

NICHOLAS F. BREEN, D.M.D.
License No. DI 1710400

FINAL ORDER
OF DISCIPLINE

LICENSED TO PRACTICE DENTISTRY:
IN THE STATE OF NEW JERSEY

Original

This matter was opened to the New Jersey Board") upon receipt of information which the Board determine er of Discipline finding that Nicholas Breen, D.M.D. ("respondent"), had violated the terms of the Board's order of reinstatement dated May 17, 2005, by testing positive for marijuana and admitting to its use, and for failing to attend AA/NA meetings as required by that order. The Board's provisional order sought, among other things, to suspend respondent's license for a period of not less than one year and to require him to participate in active monitoring and therapy.

Respondent was provided with a copy of the order by regular and certified mail mailed to his address of record on August 3, 2006, as well as to his dental office in Pennsylvania. The Board received the return receipt card indicating date of delivery at his New Jersey address on August 9, 2006 and the Pennsylvania address on August 10, 2006. (See certification of Kevin B. Earle, Executive Director of the Board, attached to this order). Dr. Breen failed to provide any response to the Board's provisional order and on January 17, 2006, the Board sent respondent a letter advising him it would move to finalize the order on February 7, 2007, and offering him one final opportunity to respond to the provisional findings of fact and conclusions of law. Despite that effort, Dr. Breen has not

submitted any information to the Board to refute the findings of fact in the provisional order or to offer mitigation of the sanction proposed in that order.

The Board has now fully considered again the underlying matter and has determined that the Provisional Order of Discipline entered on August 3, 2006, should be finalized without modification. The Board believes the suspension of Dr. Breen's license and the conditions placed upon that license prior to his ability to resume practice in this State are consistent with the public health, safety and welfare, and represent an appropriate and just sanction for Dr. Breen's failure to abide by the Board's order of May 17, 2005. Prior to his return to practice, Dr. Breen shall be required to demonstrate full compliance with the terms of this order.

As such the Board adopts the following:

FINDINGS OF FACT

1. Nicholas Breen, D.M.D. ("respondent") is licensed to practice dentistry in the State of New Jersey pursuant to a Reinstatement Order issued by the Board on May 17, 2005.

2. Prior to the issuance of the May 17, 2005 Reinstatement Order, respondent was subject to numerous disciplinary actions before the Board. The procedural history pertaining to respondent includes prior orders of the Board which were filed on March 28, 1994, August 4, 1994, April 20, 1995, and December 15, 1995.

3. Respondent has a lengthy history of substance abuse and numerous violations of previous Board orders. The matter first came to the attention of the Board in 1994 after respondent was arrested for indiscriminate prescribing of CDS drugs for his own personal use. At that time, respondent acknowledged a history of drug use, including use of cocaine, speed, crack and other psychedelic drugs prior to graduating from dental

school. Following respondent's arrest and prior to the filing of an administrative complaint, respondent entered into an Interim Consent Order with the Board dated March 28, 1994.

4. Subsequently, the Board learned that respondent violated several of the provisions of the March 28, 1994 Interim Consent Order. Specifically, respondent failed to appear for the taking of a urine sample, failed to participate in NA/AA meetings and failed to surrender his DEA registration. As a result, the Board indefinitely suspended respondent's license to practice dentistry pursuant to an order dated August 4, 1994.

5. On April 5, 1995, respondent appeared before the Board requesting reinstatement of his license. On April 20, 1995, following respondent's request for reinstatement, the Board reinstated respondent's license with restrictions. Respondent's reinstatement was contingent upon his strict compliance with all provisions of the Reinstatement Order. However, shortly after reinstatement, respondent again failed to comply with the provisions of the Board order. Respondent tested positive for cocaine metabolite in a urine sample dated August 29, 1995. Respondent also tested positive for Hydrocodone in a sample taken on September 26, 1995. The Board revoked respondent's license to practice dentistry pursuant to an Order filed on December 15, 1995.

6. On December 15, 2004, respondent appeared before the Board requesting reinstatement of his license. The Board determined respondent had met the minimum requirements for reinstatement. On May 17, 2005 the Board issued a Reinstatement Order reinstating respondent's license to practice dentistry subject to specific conditions and limitations. Among those conditions, the order required respondent to abstain from any and all controlled dangerous substances, to submit to random urine screen monitoring at least twice per month, and to attend AA meetings a minimum of once per week.

7. On September 26, 2005 the Board received notice from William I. Keene, D.D.S., M.A., then Director, New Jersey Dental Association Well Being Program, that

respondent tested positive for marijuana regarding a urine sample collected on September 16, 2005. Respondent denied having used marijuana but could not provide an explanation regarding his positive test.

8. Respondent appeared before the Board on December 21, 2005, accompanied by Dr. Keene. During his testimony, respondent admitted he had smoked marijuana prior to providing the positive sample collected on September 16, 2005. Respondent further testified that he originally told Dr. Keene that he had not used marijuana prior to providing the positive sample. Respondent further admitted that he has not attended AA/NA meetings at a minimum of once per week as required by the Reinstatement Order. Finally, respondent acknowledged he was not in possession of proof of attendance at any AA meetings as required by the Order of Reinstatement.

9. Dr. Keene also testified before the Board on December 21, 2005. He indicated respondent has not fully accepted that he is an addict. Dr. Keene stated respondent's use of marijuana shows him to be a risk. Dr. Keene further testified that respondent needs to get involved in mainstream recovery meetings and needs to be more educated about his disease and take it seriously. Dr. Keene felt respondent was minimizing.

CONCLUSIONS OF LAW

1. By his own admissions, respondent has established that he failed to comply with the provisions of the May 17, 2005 Reinstatement Order, which is deemed professional or occupational misconduct pursuant to N.J.A.C. 13:45C-1.4, and thereby provides a basis for disciplinary action against respondent's license pursuant to N.J.S.A 45:1-21(e).

2. Additionally, it appears to the Board that respondent's extensive history of past substance abuse, his September 16, 2005 positive urine sample indicating use of

marijuana, and respondent's own admission regarding marijuana use, as well as his admission regarding his failure to attend AA/NA meetings pursuant to the Board order, provides a basis for disciplinary action against respondent's license pursuant to N.J.S.A. 45:1-21(i) in that respondent is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare. Additionally, these facts provide a basis for disciplinary action, pursuant to N.J.S.A. 45:1-21(l) in that respondent is presently engaged in drug or alcohol use that is likely to impair his ability to practice the profession or occupation with reasonable skill and safety.

ACCORDINGLY, IT IS on this 21st day of Feb., 2007,

ORDERED that:

1. Respondent's license to practice dentistry in the State of New Jersey is suspended for a minimum period of one (1) year from the entry date of this order. Respondent shall surrender his biennial registration, CDS registration, DEA registration, and prescription pads bearing his name to investigators from the Enforcement Bureau, Division of Consumer Affairs.
2. Respondent shall comply with the attached directives applicable to any dentist whose license has been suspended, which are attached to this order and incorporated by reference.
3. Respondent shall abstain from the use of alcohol and controlled dangerous substances and shall not possess any controlled dangerous substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause in his own treatment. In addition, respondent shall advise any and all treating physicians and/or dentists of his history of substance abuse. Respondent shall cause any physician or dentist who prescribes medication which is a controlled dangerous substance

to provide a written report to the Board together with patient records indicating the need for such medication. Such report shall be provided to the Board no later than two (2) days subsequent to the prescription in order to avoid confusion which may be caused by a confirmed positive urine test as a result of such medication.

4. Respondent shall enroll in the Professional Assistance Program (PAP) and shall comply with the recommendations for treatment, including but not limited to an intensive outpatient treatment program addressing issues of addiction and personal responsibility. At the conclusion of such intensive treatment, respondent, at a minimum shall have face to face contact with representatives from PAP as directed by PAP, shall attend support groups, including NA or AA not less than five (5) times per week, and shall submit to urine monitoring at least once per week as set forth in paragraph 5 below. Respondent shall provide evidence of attendance at NA/AA groups directly to the Board. If respondent discontinues participation with the PAP or attendance at any support group, without first obtaining approval of the Board and the PAP, he shall be deemed in violation of this Order.

5. (a) Upon entry of this order, respondent shall submit to directly witnessed, random urine screenings, a minimum of once a week at a laboratory facility approved by the Board. The urine testing requirement shall continue until further order of the Board expressly reducing or discontinuing testing. Respondent shall be provided with specific directions for the protocol of the testing procedure and the location of the laboratory facility by PAP and/or by Kevin B. Earle, Executive Director of the Board. The initial urine screen shall utilize appropriate screening techniques and all confirming tests and/or secondary tests will be performed by gas/chromatography/mass spectrometry (G.C./M.S.) The testing procedure shall include a forensic chain of custody protocol to insure sample integrity and to provide documentation in the event of legal challenge.

(b) All test results shall be provided to Kevin B. Earle, Executive Director of the Board, or his designee in the event he is unavailable, or the successor of either. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing.

(c) Any failure by respondent to submit or provide a urine sample within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event respondent is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Kevin B. Earle or his designee. Personnel at the lab facility shall not be authorized to waive a urine test. In addition, respondent must provide the Board with written substantiation of his inability to appear for a test within two (2) days, e.g., a physician's report attesting that he was so ill that he was unable to provide the urine sample or appear for the test. "Impossibility" as used in this provision shall mean an obstacle beyond respondent's control that is so insurmountable or that makes appearance for the test or provision of the urine sample so infeasible that a reasonable person would not withhold consent to waive the test on that day.

(d) In the event respondent will be out of the State for any reason, the Board shall be so advised so that arrangements may be made at the Board's discretion for alternate testing.

(e) Any urine test result showing creatinine levels below 20 mg/dL and a specific gravity below 1.003 shall be deemed a confirmed positive urine test.

(f) Respondent shall familiarize himself with all foods, food additives or other products (such as poppy seeds), which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances.

Ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.

(g) The Board may in its sole discretion, modify the frequency of testing or method of testing during the monitoring period.

6. Respondent shall provide any and all releases to any and all parties who are participating in the monitoring, treatment or other program as outlined in this order, as may be required, in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner, via his signature on this order, respondent agrees that the Board may utilize any information received in connection with any proceeding regarding licensure.

7. Prior to any application for restoration of his license respondent shall:

(a) Appear before the Board or a committee of the Board to discuss his readiness to reenter the practice of dentistry. At that time respondent shall be prepared to propose his plans for future practice in New Jersey.

(b) Demonstrate, to the Board's satisfaction, that he is physically and psychologically fit and that he is capable of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare, and that he is not then suffering from any impairment or limitation resulting from the use of any substance, whether legal or illegal, which could affect his practice.

(c) Provide the Board with reports from each and every mental health professional (including but not limited to, psychologists, counselors, therapists, psychiatrists) who have participated in respondent's care and/or treatment during the period of time from his entry into such care or treatment until his appearance before the Board.


(d) Provide the Board with a report from the PAP detailing the nature and extent of his involvement with that entity, including a full accounting of all urine monitoring, as well as evidence of attendance at AA/NA meetings.

(e) Affirmatively establish his fitness, competence, and capacity to reenter the active practice of dentistry within New Jersey, including a full accounting of all continuing education courses completed while his license was suspended.

(f) Provide the Board with a full account of his conduct during the intervening period of time from his entry into treatment to his appearance pursuant to this order.

8. The Board may require respondent to submit to an independent psychiatric evaluation prior to his return to practice. Following review of all relevant documents submitted, the Board, in its sole discretion, will determine whether and under what conditions respondent may return to practice.

NEW JERSEY STATE BOARD OF DENTISTRY

By: 
Peter L. DeSciscio, D.M.D.
Board President



JON S. CORZINE
Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
State Board of Dentistry
124 Halsey Street, 6th Floor, Newark, NJ 07102



STUART RABNER
Attorney General

CERTIFICATION

February 6, 2007

STEPHEN B. NOLAN
Acting Director

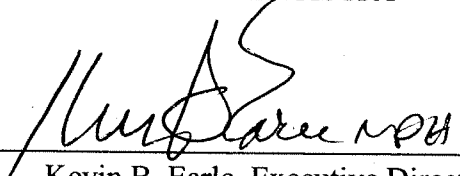
Mailing Address:
P.O. Box 45005
Newark, NJ 07101
(973) 504-6405

I, Kevin B. Earle, being of full age, do hereby certify as follows:

1. I am the Executive Director of the New Jersey State Board of Dentistry. In that capacity, I serve as the custodian of records for that agency.
2. I have caused to be searched the records of the Board of Dentistry.
3. As a result of that search, I can report that the Board of Dentistry records indicate that Nicholas F. Breen, D.M.D., License # 22DI01710400 was sent the Provisional Order of Discipline (POD) dated August 3, 2006. The POD was sent to Dr. Breen's address of record by certified and regular mail on August 3, 2006. The certified postcard (see attachment #1) was received by the Board bearing the signature "Kaitlyn Breen" and indicating the date of delivery as August 9, 2006. The regular mail was not returned.
4. An additional copy of the POD was sent to Dr. Breen's dental practice in Warminster, Pennsylvania, by regular and certified mail. The certified post card (see attachment #2) was received by the Board bearing an illegible signature and indicating the date of delivery as August 10, 2006. The regular mail was not returned.
5. A notice letter (see attachment #3) was sent again requesting a response to the POD to Dr. Breen's dental practice address in Warminster, Pennsylvania by certified and regular mail on January 17, 2007. The certified postcard (see attachment #4) was received by the Board bearing an illegible signature indicating the date of delivery as January 22, 2007. The regular mail was not returned.
6. No written response to the Provisional Order of Discipline has been received by the Board from Dr. Breen as of this date.

I do hereby certify that the foregoing statements made by me are true to the best of my knowledge. I understand that if the statements made herein are later found to be willfully false, I may be subject to punishment.

STATE BOARD OF DENTISTRY

By: 
Kevin B. Earle, Executive Director

Seal

**DIRECTIVES APPLICABLE TO ANY DENTISTRY BOARD LICENSEE
WHO IS SUSPENDED, REVOKED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

A practitioner whose license is suspended or revoked or whose surrender of license has been accepted by the Board, shall conduct him/herself as follows:

1. Document Return and Agency Notification

The licensee shall promptly deliver to the Board office at 124 Halsey Street, 6th floor, Newark, New Jersey 07102, the original license and current biennial registration certificate, and if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances Registration. With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board.

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of dentistry in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry. The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee of this Board provides health care services. Unless otherwise ordered by the Board, the disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by the practice or any other licensee or health care provider. In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from all prescription blanks and pads, professional listings, telephone directories, professional stationery, or billings. If the licensee's name

is utilized in a group practice title, it shall be deleted.

Prescription pads bearing the licensee's name shall be destroyed. A destruction report form shall be obtained from the Office of Drug Control (973-504-6558) and filed with that office. If no other licensee is providing services at the practice location, all medications must be removed and returned to the manufacturer (if possible), or destroyed or safeguarded. In situations where the licensee has been suspended for a period of less than one year, prescription pads and medications must be secured in a locked place for safekeeping.

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice, and shall be required to comply with the requirements to divest him/herself of all financial interest in the professional practice pursuant to Board regulations contained in N.J.A.C. 13:30-8.21. Such divestiture shall occur within 90 days following the entry of the Board Order. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the New Jersey Department of Treasury, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Patient Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to patient records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her patient record or asks that the record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

A disciplined practitioner whose active suspension of license has been stayed in full or in part, conditioned upon compliance with a probation or monitoring program, shall fully cooperate with the Board or its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a.) Monitoring of practice conditions may include, but is not limited to, inspection of professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with Board Order and accepted standards of practice.

(b.) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual or facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by the rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and by providing the designated sample.

6. Reports of Reimbursement

A disciplined practitioner shall promptly report to the Board his/her compliance with each directive requiring monies to be reimbursed to patients to other parties or third party payors or to any Court.

7. Report of Changes of Address

A disciplined practitioner shall notify the Board office in writing within ten (10) days of change of address.

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Dentistry are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record thereof, including the transcript and documents marked in evidence, are available for public inspection upon request.

Pursuant to Public Law 101-191, the Health Insurance Portability and Accountability Act, the Board is obligated to report to the Healthcare Integrity and Protection Data Bank any adverse action relating to a dentist:

- (1) Which revokes or suspends (or otherwise restricts) a license; or
- (2) Which censures, reprimands or places on probation, or restricts the right to apply or renew a license; or
- (3) Under which a license is surrendered.

In accordance with an agreement with the American Association of Dental Examiners, a report of all disciplinary orders is provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order may appear on the public agenda for the monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board. In addition, the same description may appear on the Internet Website of the Division of Consumer Affairs.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.